No. 16,096

United States Court of Appeals

For the Ninth Circuit

JOSEPH F. BLAYLOCK,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

ORLEANS VENEER AND LUMBER CO., a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appeals from the United States District Court for the Northern District of California, Southern Division.

Honorable Michael J. Roche, United States District Judge.

APPELLANT JOSEPH F. BLAYLOCK'S CLOSING BRIEF.

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Subject Index

Table of Authorities Cited

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ARGUMENT.

I. THE STATE OF CALIFORNIA DID HAVE JURISDICTION TO TAX THE LAND PATENTED.

In its reply brief, the United States appears to have confused the factual situation at bar in order to use

the cases cited in its brief. The brief speaks as if the United States after it has issued its patent still retains equitable title to the land so described. We respectfully submit that the cases cited do not support this position. First of all in the cases cited by the United States, principally the cases of *Hussman v. Durham,* 165 U.S. 144 (1897), *Wisconsin Central Railway v. Price County,* 133 U.S. 496 (1889), *Irwin v. Wright,* 258 U.S. 219 (1922), *Sargent v. Herrick,* 221 U.S. 404 (1910), were all cases where either there was an attempt to tax an entryman's interest prior to the time of the issuance of the final certificate and patent or there was action taken by the United States to rescind or reform a patent prior to the issuance of such final certificate. Appellant Blaylock concedes that if the situation at bar were one where the original patentee had not received his final certificate and patent, then, of course, there would not be jurisdiction in the State of California to have taxed such land.

But such is not the case. In the plaintiff's amended complaint in paragraph III thereof, the plaintiff states as follows:

> "On September 13, 1921, plaintiff issued to Patterson Homestead Patent Number 822,606, which patent contained the following description: . . . Northeast quarter of the Northwest quarter, the East half of the East half of the Northwest quarter of the Northwest quarter, the North half of the North half of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 34 in Township

13 North, Range 6 East of the Humboldt Meridian, California, containing 62.50 acres." (Tr. page 8.) This very same quotation is found as Finding of Fact No. 3. (Tr. pages 40-41.)

Thus, once the final certificate was issued, and *a fortiori* when the patent was issued, equitable and legal title to the property described in such patent has passed to the patentee from the United States and the United States has parted with all its title and control over such lands except before a court of equity.

The Supreme Court in the case of *Moore v. Robbins,* 96 U.S. (6 Otto.) 530 (1877) states:

> "But if no such appeal be taken, and the patent issued under the Seal of the United States, and signed by the President, is delivered to and accepted by the party, the title of the government passes with this delivery. *With the title passes away all authority or control of the executive department over the land, and over the title which it conveyed.* It would be as reasonable to hold that any private owner of land who has conveyed it to another can, of his own volition, recall, cancel or annul the instrument which he has made and delivered. If fraud, mistake, or error or wrong has been done, the Courts of Justice present the only remedy. These Courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals; and if the government is the party injured this is the proper course. (Emphasis added.)
>
> " 'A patent', says the Court in *U. S. v. Stone,* 2 Wall 525, 'is the highest evidence of title and is

> conclusive as against the Government and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal.' " . . .
>
> "It is a matter of course that, (after the patent is granted) neither the Secretary or any other executive officer can entertain an appeal. He is absolutely without authority. If this were not so, the titles derived from the United States, instead of being the safe and assured evidence of ownership which they are generally supposed to be, would be always subject to the fluctuating, and in many cases unreliable, action of the land office. No man could buy of the grantee with safety, because he could only convey subject to the right of the officers of the government to annul his title."

Thus, when the United States issued its patent to the land described in Section 34, the patent so issued was not void on its face but was only voidable by the United States in a suit for reformation. Inasmuch as it was only voidable and not void there would be jurisdiction in the State of California to tax. This distinction between a patent being void and voidable has not been faced by the United States. We wish to point out that the Supreme Court in the case of *Colorado Coal & I Co. v. United States,* 123 U.S. 307 (1887) faced a situation where the Attorney General sued to cancel certain patents as void and among the various contentions were, first, the contention that the lands patented were never actually settled and that the affidavits supporting the same were false. There was further the allegation that the grantees were ficti-

tious. The Supreme Court in denying the application of the United States made the following statement:

> "It is fully established by the evidence that there were in fact no actual settlements and approvements on any of the lands, as falsely set out in the affidavits in support of the preemption claims and the certificates issued thereon. This undoubtedly constituted a fraud upon the United States, sufficient in equity as against the parties perpetrating it, or those claiming under them with notice of it, to justify the cancellation of the patents issued to them. But is not such a fraud as prevents the passing of legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone the defense of *bona fide* purchaser for value without notice is perfect.
>
> In reference to such a case it is said by this Court in U. S. v. Minor, 114 U.S. 233, 243: 'Where the patent is the result of nothing but fraud and perjury it is enough to hold that it conveys the legal title. . . .' "

The *Colorado Coal* case goes on to hold that only in the case of a fictitious grantee is the patent actually void, and the court held in that particular case that there was not sufficient evidence of such fictitious grantee. In the case at bar, there is no problem but that Mr. Patterson actually existed. Therefore, at the very best the patent is merely voidable and not void and as such title passed to the patentee which gives the State of California jurisdiction to tax.

The question of jurisdiction to tax has been faced by courts in early cases. In the case of *Cannon v.*

Hood River Irrigation District, 70 Ore. 71, 154 Pac. 397, 399 (1916) the Oregon Supreme Court held:

> "Where a homestead entry has been made under the laws of the United States, final proof submitted, and final certificate issued, it operates to transfer an equitable estate, and immediately renders the land liable to taxation, although the United States holds the title *until the patent issues*" (Emphasis added.)

Likewise the court in *Burcham v. Terry,* 55 Ark. 398, 18 S.W. 458 (1892) held that in a suit by a tax sale vendee to recover possession of the land which he purchased at the tax sale wherein a defense was raised that although the original patentee had obtained his "final certificate" he had not obtained the patent yet from the United States, the court held:

> " 'When a person does everything that is necessary to entitle him to a patent to a tract of public land, he becomes the equitable owner thereof. The land is segregated from the public domain, ceases to be the property of the government, and, in absence of limitations and restrictions legally imposed, becomes subject to private ownership, and all the incidents and liabilities thereof.' Among the most certain incidents and liabilities of ownership of property by a private person is its liability to taxation . . . the Chancery Court that rendered the decree under which (the lands) were sold to the State and jurisdiction of the subject-matter of a suit which was a proceedings *in rem*".

For the above reasons, we respectfully submit that since the homestead patent involved in the within case was issued on September 13, 1921, the State of Cali-

fornia after such date did have the jurisdiction to tax the real property described in such patent; that the situation at bar is not a situation in which the State of California was attempting to tax an entryman's right after a certificate of location was made but prior to the time of patent as was the situation in the various cases cited by the United States. Therefore, the contention of the United States that the State of California did not have jurisdiction to tax the land described in such patent is without merit.

II. THE STATE OF CALIFORNIA DID TAX THE LAND DESCRIBED IN THE PATENT.

The United States raises as a defense what we submit to be a rather specious contention that the State of California did not intend to tax the property described in the patent but merely intended to tax homestead entry No. 02655 wherever that might have been. We would first wish to point out that the United States has stipulated that at the time of the conveyances both to and from the State of California that the taxing procedures were regular and that the State of California had no knowledge at either time of any misdescription of the patent. (Tr. page 55.) This being the case, it is quite evident that the State of California would not have had jurisdiction to tax any land other than the land described in the patent.

From all the cases cited by the United States in its brief and by the foregoing cases, it is quite evident that there is no jurisdiction to tax by a state upon an entryman's notice of location. *Hussman v. U. S.,* 165

U.S. 144 (1897). This line of cases has held that where an entryman has filed a notice of location that there is no jurisdiction to tax until the entryman has completed all the things required for him to do by law and that he either have received or be entitled to receive a final certificate.

Insasmuch as there was no notice of location as to the land in sections 27 and 28, it is inconceivable that entryman Patterson would have had equitable title to the land on which he was located. But even if he did have an equitable title, such title was cut off by the issuance from the United States land office of Patterson's final certificate and after the patent is issued he certainly could not have had any equitable title to any land not described in the patent. (See *Moore v. Robbins, supra.*) Because of all the cases cited on the importance and stability of patents, we submit that it is quite evident that the thing taxed by the State of California was the property described in the patent. Naturally, it is the procedure of most tax collectors and assessors not to list out the full legal description of the land. One can walk into any assessor's office within the State of California and the land which is taxed is merely referred to either by tract or parcel number or by a tract in a certain section and township. The particular identification involved in the case at bar was homestead Entry No. 02655 within the northwest quarter designated Plat No. 4 Section 34 Township 13 North, Range 6 East. We submit, therefore, that the only thing which the State of California could have had jurisdiction to tax and the only thing

which was in fact taxed was the patented property in section 34.

CONCLUSION.

For the above reasons and the reasons stated in appellant's opening brief, appellant contends:

That a patent was issued to one patentee Patterson in Section 34; that thereafter the State of California taxed the land in Section 34 and pursuant to law such land was sold to the State of California without any knowledge of any misdescription of patent and later by the State of California to Hiram S. Sims without any knowledge of any misdescription of patent; that under California law a tax proceedings is a proceedings of purchase and cuts off the rights of former owners and is not merely an incomplete conveyance as it is in some states. Therefore the right of reformation to the United States to reform the within patent has been cut off by a conveyance to *bona fide* purchasers and for such reasons we respectfully submit that the judgment of the United States District Court for the Northern District of California, Southern Division, be reversed.

Dated, Yreka, California,
September 28, 1959.

Respectfully submitted,
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